

# **Exhibit 15**



1 And there are multiple cases, Your Honor, holding  
2 that a repeat infringement policy is not adequate as a matter  
3 of law where it is undisputed that, as it realistically is  
4 here, there is not a genuine dispute that Cox has failed to  
5 terminate known repeat infringers. And when it fails to do  
6 that, it takes itself out of the safe harbor.

7 As the ALS Scan case out of the Fourth Circuit said,  
8 the safe harbor is for innocent, innocent service providers.  
9 And that innocence disappears when you learn of infringement  
10 and you do nothing.

11 That's what we have here. Cox knew of infringement.  
12 It did nothing. That as a matter of law takes it outside of  
13 the DMCA safe harbor.

14 THE COURT: Okay. Thank you.

15 Mr. Bridges.

16 MR. BRIDGES: Thank you, Your Honor. Evidence of  
17 actual terminations, I would point the Court to Linda Trickey's  
18 declaration on the summary judgment motion, paragraph 17. The  
19 Beck declaration opposing the plaintiffs' motion, Exhibit A.  
20 Even Exhibit 55 of Mr. Theodore's declaration.

21 I actually commend to the Court, and they have picked  
22 what they have found to be -- they think to be the most  
23 inflammatory e-mails, it's actually worthwhile reading the full  
24 e-mails and seeing the discussions that are going on.

25 There is a reluctance to terminate. There is an

1 effort to work with people. It's, let's try to get them to  
2 shape up. And there is an effort. And there is evidence that  
3 people do shape up. And that is why Cox works so hard with  
4 them.

5 Your Honor asked about other ISPs. And actually  
6 that's one of the things we use the Rosenblatt declaration  
7 about.

8 THE COURT: Yeah, but he doesn't know. He's familiar  
9 with the policies, and he thinks this and he thinks that, but  
10 you need third-party people who are working at those entities  
11 to have personal information. And he doesn't have the personal  
12 information.

13 MR. BRIDGES: But he did draw upon the published  
14 statements --

15 THE COURT: Yeah.

16 MR. BRIDGES: AT&T, Your Honor --

17 THE COURT: Well, if you drew upon the public  
18 statements that Cox made, you would think that they had a  
19 wonderful policy and that they had a very structured review of  
20 when terminations would occur. And the numbers belie that. So  
21 that's why it's of marginal use.

22 MR. BRIDGES: So there is I think some other  
23 information. We do know that AT&T -- I am pretty sure, AT&T  
24 actually requires an adjudication.

25 Verizon didn't terminate anybody, I believe, until

1 2012. One of their e-mails that they tried to use against Cox  
2 because it has a chimp on it, chimp number 6, it's discussing a  
3 news article that says that Verizon has started terminating  
4 people. And the evidence is that Cox has been terminating  
5 people I think since at least 2004, if not earlier. There was  
6 a tip in the numbers, but there are real terminations.

7 THE COURT: So that would be evidence if it's in the  
8 record that you could present to a jury as to whether your  
9 program was reasonable.

10 MR. BRIDGES: That's correct, Your Honor. One thing  
11 though that I think is useful in looking at Rightscorp's  
12 arguments here and its notices -- it's not an obligation. It  
13 is a condition of the safe harbor, is to adopt, notify users  
14 of, and reasonably implement a policy for the termination of  
15 account holders and subscribers who are repeat infringers.

16 Now, I can't remember if it was Mr. Pecau or somebody  
17 on the other side earlier said the law makes no difference  
18 between subscribers and users. It absolutely does make a  
19 difference in the text of section 512(i). It doesn't say:  
20 Terminate subscribers where their accounts have been misused.  
21 It said: Terminate subscribers or account holders who are  
22 repeat infringers.

23 Now, the big question, and this is part of the  
24 uncertainty that the Court has pointed to in the law, elsewhere  
25 in section 512 there are references to claims of infringement.